IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1366 OF 2004

Rashtriya Chemicals & Fertilizers Ltd.,
a public sector undertaking having its
registered office at Priyadarshini,
Eastern Express Highway, Chembur,
Mumbai-400 074. ...Petitioner.

Vs.

1. The Chairman, Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay having its registered office at 84A, Broach Sadan, Devji Ratanshi Marg, Dana Bunder, Mumbai-400 009.
2. Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay constituted under Section 6 of the Maharashtra Mathadi, Hamal & other Manual Workers (Regulation of Employment and Welfare) act, 1969, having its Registerd Office at 84-A, Broach Sadan, Devji Ratanshi Marg, Dana Bunder, Mumbai-400 009.
3. The Transport and Dock Workers Union, having its office at P.D'Mello Bhavan, P. D'Mello Road, Carnac Bunder, Mumbai-400 038.
4. Maharashtra Rajya Mathadi Transport & General Kamgar Union having its office at Jivraj Bhanji Shah Market, 3rd Floor, Near Masjid Station, Mumbai-400 009.
5. The Commissioner of Labour, Government of Maharashtra, having its office at Commerce Centre, 7th

Floor, Tardeo, Mumbai-400 034.
6. The State of Maharashtra,
through Principal Secretary (Labour). ...Respondents

....

Mr.J. P. Cama with Ms.Swati Deshpande i/b. M/s. M.S. Bodhanwala & Co. for the Petitioner.
Mr. A.V. Bukhari with Mr. V.A. Bukhari for Respondent Nos.1 & 2.
Mr.Anand Grover i/b. Mr. M.S. Topkar for Respondent No.4.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

December 23, 2004.

**ORAL JUDGMENT** (PER DR. CHANDRACHUD, J):

I

The impugned order dated 2nd March 2004 has been passed by the Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay. By the order, a wage revision has been effected with effect from 1st January 2001 for the Mathadi Workmen engaged in the establishment of the Petitioner. The service conditions of these workmen are governed by the Maharashtra Mathadi Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and the Scheme framed thereunder. The operative directions issued by the statutorily constituted Board in its impugned order are as

follows:

> "1. All the registered workmen (engaged by the Company and by Contractor) working at RCF Ltd., Chembur should be given wage rise at the rate of 18% (10% Interim rise after adjustment 10% + 8% =18%) on their existing Wage Rate on 1-1-2001.
>
> 2. On this rise levy as per the rate decided for RCF and rise in DA declared every year be given.
>
> 3. 6% increase in DA declared for the year 2003 should be given.
>
> 4. 18% increase in Wages with declared rise in DA should be deposited with the Board regularly from January 2004 onwards and difference of 8% Wage rise for the period of 1.1.2001 to 31.12.2003 and difference of DA for the period of 1.1.2003 to 31.12.2003 should be deposited within two weeks from the date of receiving this order.
>
> 5. To continue the Service facilities as per the last Agreement.
>
> 6. Wage rise of this Order is decided for the period of 1.1.2001 to 31.12.2003 and will exist till further decision."

For the reasons which we now indicate, we affirm the correctness of the order passed by the Board and dismiss this Petition under Article 226 of the Constitution.

II

2. The Petitioner is a registered employer within the meaning of the Act and is registered with the Second Respondent, the Statutory Board, since 28th May 1986 for engaging Mathadi Workers to carry out scheduled operations of loading, unloading and other ancillary operations. Prior to the registration of the Petitioner with the Second Respondent, the wages and other conditions of service of Mathadi Workers employed with the Petitioner were fixed as between the Petitioner and a Labour Co-operative Society through which the workers were engaged. After the registration of the Petitioner with the Second Respondent, the wages and conditions of service were regulated by the Board after hearing the Petitioner and the Fourth Respondent which is a Union representing the Mathadi Workers employed with the Petitioner. A number of settlements were signed in the past, the first of which dated 8th July 1986 was operative until 31st December 1987. Thereafter, a settlement was arrived at on 21st July 1988 for the period commencing from 1st January 1988 and ending on 30th September 1992. By the said settlement, an increase of about

17% was granted to the daily rated workers and an increase of 10% plus Rs.300/- per month was granted to piece rated workers apart from the levy payable to the Board. The settlement provided that the increase granted to daily rated and piece rated workers would be after adding an 11% rise in the Dearness Allowance declared by the Second Respondent on the wage rate prevailing on 31st December 1987. After the expiry of the settlement dated 21st July 1988, the wages and other service conditions were revised by a settlement dated 23rd January 1993 covering the period from 1st December 1992 to 30th December 1996. Under the said settlement, the Petitioner agreed to grant a 12.5% increase in the rates of piece rated workers and a 30% increase in the wages of daily rated and monthly rated workers. Clause 3(b) of the settlement provided that the Petitioner would grant every year, an increase in Dearness Allowance linked with the Consumer Price Index Number to Mathadi Workers at the rate declared by the Second Respondent from time to time. These facts have been set out in the affidavit in reply filed by the First and Second Respondents to demonstrate that the payment of Dearness

Allowance was in addition to periodical wage revisions and this was a part of the accepted pattern of wage settlements in the past. The Board thus submits that the instant wage revision is consistent with the past pattern.

III

3. The last settlement of 23rd January 1993, expired on 30th November 1996. On 11th December 1996, the Fourth Respondent, Union, placed its demand seeking a 30% increase in the rates of wages. Demands were also raised by the Third Respondent. The Board convened several meetings between February 1999 and July 2000 of the Petitioner and the two Unions since there was no increase in the rates of wages of Mathadi Workers since 1996. No settlement was arrived at and the Union gave a notice of strike. A meeting was convened before the Commissioner of Labour on 3rd July 2000. Further meetings took place on 13th July 2000 and 18th July 2000 after which an order was passed by the Board granting an interim increase of 10% to the Mathadi Workers over the existing emoluments. The Petitioner filed a Writ Petition before this

Court (Writ Petition 1840 of 2000) to challenge the interim direction, which was disposed of by an order dated 4th May 2001. This Court set aside the order of the Board dated 18th July 2000 and remanded the issue for decision by the Board in accordance with law. In the meantime, the Petitioner was directed to pay an increase of 10% to the Mathadi Workers with effect from 1st January 2001 as directed in the order of the Board dated 18th July 2000 subject to final adjustment. Thus, the interim relief that was granted by the Board was continued by the order of this Court with prospective effect from 1st January 2001.

4. Meetings were convened before the Board on 1st June 2001, 13th June 2001 and 20th June 2001 and a decision was taken inter alia to visit establishments like the Petitioner to study working conditions and other related issues. The Petitioner was furnished a due opportunity to furnish its profit and loss accounts, balance-sheet and annual reports for the relevant period. In the affidavit in reply that has been filed before the Court by the Board, it has been stated that the representative of the Petitioner refused

to submit these documents on the ground that unless a letter to that effect was sent, documents would not be submitted. The Petitioner was, thereupon, called by a letter dated 23rd June 2001 to submit the aforesaid documents as well as the annual wage bill, details of the number of permanent employees and staff engaged by the Petitioner, scales of pay, of the Voluntary Retirement Scheme and copies of settlements, agreements and awards governing the service conditions of permanent employees. A reminder was sent to the Petitioner on 20th July 2001 following which by a letter dated 18th August 2001, the Petitioner is stated to have furnished some information. The representatives of the Board, of the Petitioner and of the two Unions visited the establishments of Dharamsi Morarji Chemicals Company, Ambernath and Krushak Bharti Limited, Surat to study the working conditions and conditions of service.

5. On 1st November 2001, the State of Maharashtra reconstituted a Tripartite Board. On 10th January 2002, the Board resolved to increase the Dearness Allowance by 6% taking into

account the Consumer Price Index of the preceding 12 months. The Petitioner challenged the circular of the Board in a fresh Writ Petition (Writ Petition 937 of 2002). The aforesaid writ petition was disposed of by an order dated 27th August 2002 by which the Division Bench directed the Board to consider the issue of increase in wages to the Mathadi Workers finally in accordance with the directions issued by this Court on 4th May 2001. In the meantime, the direction contained in the circular of the Board to pay an increase of 6% on the existing monthly wages was rendered ineffective. The Board thereupon, passed fresh orders dated 29th October 2003 and 31st October 2003 which came to be challenged once again by the Petitioner in Writ Petition No.1911 of 2003. The aforesaid petition was disposed of by a Division Bench on 12th January 2004. Counsel appearing for the Board conceded before the Court in that Petition that since no reasons had been furnished in the orders of the Board on 29th and 31st October 2003, fresh orders containing reasons would be issued within a period of four weeks. Pursuant thereto, a reasoned order has now been passed by the Board on 1st March 2004.

IV

6. In its impugned order, the Board has duly considered all the points which have been raised by the management – the Petitioner herein, and has furnished justification for revising the wages and service conditions. The Board has noted in its order that during the process of wage revision, the Petitioner had proposed a reduction of man power and that the stand of the management was that if the Union and the Board would support the reduction of man power, the issue of wage revision could be considered. In September 2002, a scheme of Voluntary Retirement was declared by the management. A total strength of 452 daily rated and piece rated workmen was reduced under the VRS and an amount of Rs.36,11,165/- per month is the permanent reduction in the monthly liability towards wages. Prior to the reduction of strength, an amount of Rs.67,37,026/- was being received by the Board towards monthly wages, whereas after the implementation of VRS, the monthly wages deposited with the Board are in the amount of Rs.31,25,862/-. This, the Board noted,

has resulted in a saving of Rs.5,41,67,485/- in the form of wages and levy between October 2002 and December 2003. The management, according to the Board, has already recovered the expenditure under the VRS from the savings occasioned by wage reduction.

7. The Board noted that the last agreement on wage revision which was entered into in 1993 expired in November 1996. As a result of the order passed by this Court on a challenge to the interim increase granted by the Board, an interim increase of 10% was granted to the workmen from 1st January 2001. On 7th December 2002, the management had entered into an agreement qua its permanent employees granting them arrears of about Rs.120 crores from 1st January 1997. The order of the Board recorded that the gross profit of the Petitioner was Rs. 115.98 crores in 1996-97, Rs. 258.04 crores in 1997-98, Rs. 187.33 crores in 1998-99, Rs. 65.53 crores in 2000-01 and Rs. 34.21 crores in 2001-02.

8. The Board has found that there is a vast difference between the job of loading and unloading which is done in registered Railway Yards or other similar organisations and the job done in RCF. Most workers working in Railway yards have to do loading and unloading work only when railway wagons are available. However, in so far as work at the establishment of the Petitioner is concerned, production in the factory is on a continuous basis and the workers are required to put in continuous and hard manual labour.

9. The Board visited other similarly placed establishments in the region and studied the conditions of service there, in accordance with the region-cum-industry principle. The Board has noted that the wage rates of workers engaged by the Petitioner at Chembur may at first examination appear to be higher than those of the Units of Deepak Fertilizers and Dharamsi Morarji Chemicals. The Board, however, noted that for one thing, the Petitioner is an old Company existing over a length of time and settlements have been entered into in the past to provide wage increases to the

workers from time to time. Moreover, the other Units which were studied, were situated in the C Zone wherein several concessions have been provided by Government. Labour is available in that region at a lower rate as compared to the rate prevailing in the Mumbai Zone. Having regard to the higher living cost prevailing in Chembur, Mumbai, the Board was of the view that the difference in wage rates is justified.

V

10. In the affidavit in reply which has been filed in these proceedings, the Board has justified the decision to grant a wage increase in the terms as incorporated in the impugned order. One of the objections of the Petitioner is that a levy of 48.33% is being charged to the Petitioner which is higher than the levy which has been charged to other employers. In the affidavit in reply, it has been explained that a levy at the rate of 48.33% in the case of the Petitioner, was agreed to by the Petitioner in the settlement that was entered into in 1993 and consequently it is not open to the Petitioner to raise a grievance at this stage. The additional levy of

5.33% was agreed upon by the Petitioner in clause (3) of the settlement dated 23rd January 1993 and is towards payment of leave with wages and house rent allowance. Every registered employer is required to deposit an amount representing the levy with the Board in accordance with the Scheme framed under the Act. Welfare facilities are provided therefrom to the workers by the Board. The Petitioner has accepted a levy of 48.33% in past wage settlements. The Board has in the circumstances justifiably rejected the submission.

11. The Board has submitted that there was no revision of pay scales of Mathadi Workers since the expiry of the last settlement in 1996 and comparable concerns have in fact, better service conditions which factors were taken into consideration by the Board. The Board has stated that a number of Mathadi Workers registered with it, draw higher wages than those employed by the Petitioner. After the implementation of the Scheme for Voluntary Retirement, 451 Mathadi Workers were removed from the rolls of the Petitioner and since then, only 373 Mathadi Workers

are engaged. The payment of Dearness Allowance linked with the Consumer Price Index Number is a statutory liability and no grievance, it has been urged, can be made by the Petitioner since this pattern is consistently followed in the past.

12. The Court must be mindful of the fact that since 1996 there was no wage increase for the Mathadi Workers engaged by the Petitioner and the increase granted to the Workers in the order dated 1st March 2004 has been given with effect from 1st January 2001, the date from which this Court granted an increase of 10% as and by way of interim relief. The Petitioner has implemented a wage settlement for its own regular employees on 7th December 2000 by which an amount of Rs.120 crores has been paid as arrears from the period after 1st January 1997. In these circumstances, it has been urged – and in our view with justification - that the Mathadi Workers cannot be deprived of their legitimate dues. The First and Second Respondents have stated on affidavit that the Petitioner has saved an amount of Rs.7,22,41,353/- by not paying for the increase during the period from 1997 to 2001.

13. The Maharashtra Mathadi Hamal and Manual Workers (Regulation of Employment and Welfare) Act, 1969 was enacted as a measure of social welfare for regulating the terms of employment and conditions of service of unprotected manual workers. In the present case, settlements were arrived at between the Petitioner and the Union on 8th July 1986, 21st July 1988 and 23rd January 1993. Clause 3(b) of the last settlement which expired on 30th November 1996 provided in terms that the Petitioner would pay every year an increase in the Dearness Allowance linked with the Consumer Price Index as declared by the Second Respondent, Board, from time to time. The wages and service conditions of the workers have not been revised since 1996 when the last settlement expired. By and as a result of the order that was passed by this Court on 4th May 2001, on a challenge to the interim relief granted by the Board, an interim increase of 10% was granted prospectively with effect from 1st January 2001. The Petitioner has implemented a Scheme for Voluntary Retirement which has resulted in a reduction of strength of 452 Mathadi Workers.

Thereafter, 373 Mathadi Workers continue to be engaged by the Petitioner. The implementation of the VRS has resulted in a saving of Rs. 5.41 crores in wages and levy between October 2002 and December 2003. In these circumstances, the Board held that the management has recovered the expenditure incurred under the VRS from the savings on wage reduction. The Board has granted a wage increase to the workers from 1st January 2001. In granting the increase, the Board has considered the financial position of the Petitioner as well as the principle of region-cum-industry. The Board has held that the wage rates in the Chembur area in Mumbai cannot be compared to areas such as the Thal Unit of Deepak Fertilizers where the living standards are much lower. In a matter such as the present, the Court cannot be unmindful of the fact that the Mathadi Workers are manual workers engaged for loading and unloading operations. They are veritably at the lowest end of the spectrum of industrial workers. Hour after hour, day after day, month after month until the inevitable consequences of labour in such difficult conditions takes its toll on these frail human frames, the Mathadis work ceaselessly in arduous conditions. The object of

the Act is to grant them security of service conditions. The Board has furnished cogent reasons in its order. This Court in its jurisdiction under Article 226 of the Constitution, would not be justified in reappreciating those reasons in the manner of an appellate authority. The Board has applied well settled principles and has arrived at a reasoned decision. The order passed by the Board cannot be faulted. We do not find any merit in the petition which is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.